

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6823

BILL NUMBER: SB 338

NOTE PREPARED: Dec 31, 2009

BILL AMENDED:

SUBJECT: Expungement of Arrest Records.

FIRST AUTHOR: Sen. Tallian

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It provides additional situations in which a person may petition a court to expunge arrest records.
- B. It provides that law enforcement agencies shall not release a limited criminal history to noncriminal justice agencies when certain petitions are filed.
- C. New Penalty – It provides that it is a Class B misdemeanor if an employee of a law enforcement agency violates the expungement of arrest records laws.

Effective Date: July 1, 2010.

Explanation of State Expenditures:

Explanation of State Revenues: *Effect of Civil Petitions on Court Fee Revenue:* This bill allows an individual whose criminal charge was dismissed to petition the court for expungement of arrest records. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase.

The *Indiana Judicial Report* records the number of cases that were dismissed in trial courts and city and town courts each year. Based on a five-year average of criminal cases that were dismissed between 2004 and 2008, about 73,000 cases are dismissed each year as shown in the following table.

Criminal Filings Resulting in Dismissals 2006 through 2008				
	2006	2007	2008	3-year average
Felonies	13,510	13,969	12,943	13,474
Misdemeanors in Trial Courts	47,876	48,675	45,244	47,265
Misdemeanors in City and Town Courts	<u>13,042</u>	<u>11,331</u>	<u>11,572</u>	<u>11,982</u>
	74,428	73,975	69,759	72,721

To petition the court to have a criminal filing expunged, the person would have to file a civil case in court. To estimate the potential increase in new civil filings, LSA assumes that defendants with no prior criminal convictions are likely to petition for expungement so they can continue to have a clean record. No published statistics are available in Indiana on the criminal background of criminal defendants. However, based on felony defendants in the 75 most populous counties in the United States, 46% of all defendants had been previously convicted of a felony. Consequently, LSA assumes that 54% of the defendants whose cases were dismissed will file for a petition to have their criminal charge expunged.

The following table illustrates any new revenue that the general fund at the state and local levels could receive if fees are collected from these new cases.

The state General Fund would receive the following:

1. Civil filing fee (\$70 (i.e., 70% of \$100) if filed in a trial court or \$55 (55% of \$100) if filed in a city or town court)
2. Automated record keeping fee (\$7)
3. Judicial salaries fee (\$18)
4. Public defense administration fee (\$3)
5. Court administration fee (\$5)
6. Judicial insurance adjustment fee (\$1)

Fees deposited into the general funds of local governments will come primarily from the local portion of the civil filing fees. Local units receive 30% of the filing fee revenues from trial courts (\$30 of the \$100 filing fee) and 45% of the filing fees (or \$45 of the \$100 filing fee) if the case is filed in a city or town court.

Estimated Revenue from Court Fees						
	3-year average		% filing		State Share	Local Share
Felonies	13,474	x	54%	=	756,700	218,279
Misdemeanors in Trial Courts	47,265	x	54%	=	2,654,402	765,693
Misdemeanors in City and Town Courts	<u>11,982</u>	x	54%	=	<u>672,894</u>	<u>291,163</u>
	72,721				4,083,996	1,275,134

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class B misdemeanor is \$1,000. However, any additional revenue would likely be small.

Explanation of Local Expenditures: *Effect of Civil Petitions on Court Filings* – Any adverse effects these added filings will have on the courts will depend on each court's current number of judicial officers and staff and the current number of cases.

The added number of civil filings will likely increase the workload of courts unevenly. The following table illustrates the new cases that counties might have if some defendants file for expungement.

Added Workload for Counties From New Petitions for Expungement								
New Cases Filed Each Year	Less than or Equal to 50	More than 50 or Equal to 100	More than 100 or Equal to 200	More than 200 or Equal to 350	More than 350 or Equal to 500	More than 500 or Equal to 1,000	More than 1,000 or Equal to 7,500	More than 7,500
# of counties	20	27	18	9	8	5	4	1

The increase in civil filings could also affect the workload of the local law enforcement agencies and the prosecuting attorney's offices. Under current law, any law enforcement agency that wishes to oppose the expungement is required to file a notice of opposition with the court within 30 days after the petition has been filed setting forth reasons for resisting the expungement.

Penalty Provision: A Class B misdemeanor is punishable by up to 180 days in jail.

Explanation of Local Revenues: See *Explanation of State Revenues*.

Penalty Provision: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Division of State Court Administration.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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